Flatbush Manor Care Center and Fair Management Consulting Corporation *and* Local 1199, Drug, Hospital and Health Care Employees Union. Cases 29–CA–15884, 29–CA–16834, and 29–CA–16937

January 31, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

On June 20, 1994, Administrative Law Judge Robert T. Snyder issued the attached decision. The Respondents filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Flatbush Manor Care Center and Fair Management Consulting Corporation, Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In finding that the Respondents violated Sec. 8(a)(3) and (1) by changing employee Boyer's job duties, we rely particularly on the judge's findings concerning the Respondents' unlawful motive and the lack of evidence that Boyer actually had access to confidential information.

Thomas Maher, Esq. and *Saundra Rattner, Esq.*, for the General Counsel.

Elliot Mandel, Esq. (Kaufman, Naness, Schneider & Rosensweig, P.C.), for the Respondents.

DECISION

STATEMENT OF THE CASE

ROBERT T. SNYDER, Administrative Law Judge. This case was tried before me on July 20 and 21, 1993, in Brooklyn, New York. The consolidated complaint alleges that Flatbush Manor Care Center and Fair Management Consulting Corp. (Respondents Flatblush and Fair), and, collectively (Respondents), engaged in an act of surveillance of the Charging Union, Local 1199, Drug, Hospital and Health Care Employees Union (Union or Local 1199), by directing an employee Marc Boyer, to engage in surveillance by supplying it with copies of union leaflets and detained and subjected to a physical search the said Boyer, in violation of Section 8(a)(1) of the Act, and changed Boyer's job duties in violation of Section 8(a)(1) and (3) of the Act. The complaint also alleges that Respondent issued written warnings to a number of employees because they engaged in certain protected conduct in violation of Section 8(a)(1) and (3) of the Act. Respondents filed answers denying the commission of any unfair labor practices.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. General Counsel and Respondents have each filed posttrial briefs, which have been carefully considered. Upon the entire record in the case, including my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

At all times material herein, Respondent Flatbush, a partnership with its offices and place of business located at 2107 Ditmas Avenue, in the Borough of Brooklyn, City and State of New York (the Brooklyn Facility), has been a licensed operator of a nursing home, providing health care services and related services. During 1992, a period representative of its annual operations generally, Respondent Flatbush, in the course and conduct of its business operations described above, derived gross revenues in excess of $100,000 and purchased and received at its Brooklyn facility medical supplies and other products, goods, and materials valued in excess of $50,000 directly from other enterprises located outside the State of New York. At all times material herein, Respondent Fair, a New York corporation, with its principal office and place of business located at the Brooklyn facility, has been engaged in the business of providing employee staffing, payroll, and other related services to Respondent Flatbush. During 1992, a period representative of its annual operations generally, Respondent Fair, in the course and conduct of its business operations described above, derived gross revenues in excess of $100,000 and purchased and received at its Brooklyn facility, medical supplies and other products, goods, and materials valued in excess of $50,000 directly from other enterprises located outside the State of New York. By virtue of the foregoing, and as admitted by them, I find that Respondents Flatbush and Fair are now, and have been at all times material herein, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and health care institutions within the meaning of Section 2(14) of the Act.

Respondents Flatbush and Fair admit, and I find that Local 1199 is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *History of the Board Proceeding Resulting in Certification of the Union and Finding of Single Employer Status for Respondents*

Upon a petition filed by Local 1199 on January 4, 1991, in Case 29–RC–7764, and pursuant to a Decision and Direction of Election, issued by Regional Director Alvin Blyer of Region 29 of the Board on February 11, 1992, an election by secret ballot was conducted on March 12, 1992, in a unit consisting of all full-time and regular part-time employees employed by Respondents at their Brooklyn, New York location, including aides, recreational aides, orderlies, dietary employees, and licensed practical nurses, but excluding all ''pool'' licensed practical nurses, housekeeping employees, registered nurses, social workers, occupational therapists, physical therapists, speech therapists, office clerical and business office clerical employees, medical directors, nursing supervisors, in-service directors, rehabilitation supervisors, infection control nurses, administrators, assistant administrators, bookkeeping supervisors, directors of nursing, plant maintenance directors, dietary directors, recreation directors, purchasing directors, admissions directors, medical records directors, guards, and supervisors as defined by the Act.

In the Decision and Direction of Election the Regional Director found, inter alia, that Respondents Flatbush and Fair were a single integrated enterprise and a single employer within the meaning of the Act.

The tally of ballots served upon the parties at the conclusion of the election showed that a majority of the valid votes counted plus challenged ballots were cast for Local 1199.

On August 5, 1992, the said Regional Director issued a Supplemental Decision on objections and certification of representative in Case 29–RC–7764, overruling all the objections to the election and certifying Local 1199 as the exclusive collective-bargaining representative of Respondents' employees in the unit described above.

On or about September 11, 1992, Respondents filed with the Board, requests for review of the Supplemental Decision. In an order dated August 19, 1993, the Board denied the requests for review as they raised no substantial issues warranting review.

The consolidated complaint alleges that the Respondents have been affiliated business enterprises with common officers, owners, directors, management and supervision, and that by virtue of their business operations constitute a single integrated business enterprise and a single employer within the meaning of the Act. The Respondents joined the General Counsel in a stipulation agreeing to be bound for purposes of jurisdiction and single integrated enterprise by a final determination by a court of competent jurisdiction as it relates to Case 29–RC–7764 or a subsequent proceeding related thereto. In accordance with the parties' stipulation and on the basis of the Board's final determination on this matter, which is binding on me, I find and conclude that Flatbush and Fair constitute a single integrated business enterprise and a single employer within the meaning of the Act.

B. *The Allegations Involving Employee Marc Boyer*

Marc Boyer was an employee who had worked for Respondent Flatbush at the Brooklyn facility for 9 years as a housekeeper until December 31, 1991, when he lost his job for reasons unrelated to this proceeding. He had been in the bargaining unit described above, which, until January 3, 1991, had been represented in a bargaining relationship with at least Respondent Flatbush by 1115 Nursing and Service Employees Union, Division of 1115 District Council, AFL–CIO.[1]

Boyer testified that when Local 1115's contract was about to expire he and other employees got together to seek union representation and he contacted Local 1199 about such representaton. In September 1990, he called Union Agent Sylvia Rosodo who arranged to meet with employees and an organizing campaign got underway. By January 4, 1991, Local 1199 had filed a representation petition, with the ultimate results previously described. Boyer personally participated in distributing and receiving signed union designations from employees. In March and April 1991, a hearing was held on the Union's petition. Boyer attended with other employees to assist and provide support for the Union.

During the course of the hearing, Boyer served a union subpoena on Arthur Boden, Respondents' administrator. He personally served Boden in the bookkeeping office at the Brooklyn facility one day in March or April 1991 shortly before he was scheduled to start work at 4 p.m.

Boyer's work duties included collecting refuse from waste baskets, in the offices off the lobby, first and second floors, vacuuming carpeted areas on those floors, cleaning up, sweeping, and fixing the tables in the dining room located off of the lobby. He worked a 4 p.m. to midnight shift. Among the offices from which he collected refuse daily and vacuumed were those of Administrators Oberlander and Boden.

Four or five days after serving the subpoena on Boden, Tom Barrios, his supervisor in housekeeping,[2] told Boyer he would not be working anymore on the lobby but would be working in the basement. Boyer said he had been working for a long time on the lobby, he did not do anything wrong, and asked why Barrios was trying to isolate him downstairs. Barrios now replied that he would go upstairs, to the administrative offices. He came back and informed Boyer that it was okay for him to continue what he had been doing on the lobby area, the first and second floors. As a result, Boyer's duties were not then changed.

About 4 days after this last incident, Boyer was routinely removing garbage from the office of David Oberlander, assistant administrator, located at the end of a hallway on the

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[1] In a separate proceeding, based upon charges filed by that Union in Cases 29–CA–14844, 29–CA–15253, and 29–CA–15376, I presided at an unfair labor practice hearing which was heard and closed on July 19, 1993, immediately preceding the instant hearing in which the consolidated complaint alleged that Respondents Flatbush and Fair were a single employer which had failed to make contractually required payments to employees, remit contractually required contributions to union funds and to furnish the Union with certain information requested by it during the period it was exclusive collective-bargaining representative.

[2] Although Barrios was employed by a separate entity called Health Care Housekeeping, Boyer credibly testified, and was corroborated later by Boden that Barrios supervised his and other employees' activities in the housekeeping function, and General Counsel later successfully amended the complaint to allege Barrios as an agent, acting on Respondents' behalf at all times material, and I find that he was such an agent.

main or first floor of the Brooklyn facility. Boden's office, nearby, is separately entered from the hall. According to Boyer, present in Oberlander's office at the time were Oberlander, his wife, and Administrator Boden. Oberlander said ''Marc, you have been working here a long time, you are my friend. Could you tell me when you have a 1199 leaflet, could you show it to me?'' Boyer told him ''no, I can't be on your side, because I have a wife and two daughters to take care of.''

As explained by Boyer, Local 1199, in its organizing campaign, was issuing leaflets to employees to solicit their support in the upcoming election to be held with four Unions to be listed on the ballot. Oberlander was also aware of Boyer's support for Local 1199 because Boyer wore an Local 1199 button in his presence at the Brooklyn facility; on one occasion Oberlander looked at the button but did not make any comment. Further, Boyer's name appeared on a leaflet which remained posted with copies retained on a table by the employee timecard stacking area for more than a day about a week after his discussion with Oberlander.

The leaflet had handprinted wording in black on a white background as follows:

SOMETHING IMPORTANT

FOR
FLATBUSH MANOR EMPLOYEES
———DO YOU KNOW THAT
(JEANNETE RENNER)
(MARC BOYER)
(HILARY BROWNE)
(DOROTHY WADE)
ALL HAVE SECOND ''FULL''
TIME JOBS ??
————ASK YOURSELF;
CAN YOU AFFORD TO LOSE
YOUR JOBS ?
''REMEMBER''
THINK OF YOUR FAMILIES

Respondent counsel represented that the leaflet had not been prepared by Respondents. It did contain Boyer's name, among four named employees, which was prominently displayed in an area by which Respondents' management personnel passed on a daily basis. And it clearly related to the organizing campaign.

About a week or a week-and-a-half after Boyer's discussion with Oberlander in the office, Barrios informed Boyer that he was not allowed to come into Oberlander's office and administrative office. Barrios said they have other people to take care of these two rooms. Barrios added that Oberlander didn't want him to come into his office again. Although Barrios worked days he stayed late to 5 or 6 p.m. at times and this conversation was held after Boyer had punched in to work at 4 p.m. Barrios now gave Boyer an additional job of cleaning wheelchairs of patients located from the first to fifth floors after they had retired for the night. His salary was not reduced or changed.

On July 11, 1991, Boyer reported to work as usual at 4 p.m. During the evening he lent his cleaning cart containing cleaning equipment, bucket, mop, cleaning solutions, brushes and the like, to a fellow employee, Do Do Ettiene, who had been called upstairs for an emergency cleaning assignment. Boyer picked up garbage in plastic bags from the dining room off the front lobby while he did not have the use of his cart and equipment for cleaning purposes. He reached a point at about 10:45 p.m. where he placed a telephone call from the security area at the reception desk across the hall from the dining room to request Ettiene to return his cart. Boyer placed the call to the nurse in charge on the fourth floor where he knew Do Do had the emergency. Right then Oberlander came by. He asked Boyer how he was, Boyer told him he was fine, and then Oberlander told Boyer to put the phone back. Boyer put it down but then picked it up again to call Ettiene, and this time Oberlander not only repeated his direction to Boyer to put the phone back but took Boyer's hand away from the telephone.

Oberlander then called over two security guards and told them to search him, search him. Boyer later described Oberlander as appearing excited, nervous, and upset. Oberlander stood in front of Boyer and the guards approached and took up positions on each side of him. Before the guards could commence a physical search Boyer called out to two employees who were within earshot to come to see what Oberlander tried to do to me. These employees were nurses aides, a Ms. Jose and a Ms. Kerr. When these two employees came over to Boyer and the others Boyer took everything out of his pockets, threw the contents on the floor and exclaimed, look I have nothing wrong in my pockets. These items included an Local 1199 leaflet and button. Oberlander looked at the items including the union emblems on the floor, said nothing and he and the guards left.

Under cross-examination, Boyer acknowledged that his pretrial affidavit contained no reference to Boden being present in Oberlander's office when he was asked for a union leaflet. On the other hand, Boyer explained that, being Haitian, his native language is French, and he may have missed something in reviewing the affidavit. He insisted, nonetheless, that both Boden and Oberlander's wife were present with Oberlander at the time.

As regards the physical search of Boyer's person, the evening that it took place Boyer saw police lights flashing outside the facility, and he later became aware that there had been talk of a bomb threat. At the time, Local 1199 had threatened to call a strike at the facility but had called it off before then, and there were more than the usual number of security guards on duty on that date, July 11. Boyer was also aware that Boden had arrived at the facility after Oberlander the evening of the search.

Boyer confirmed that at the time of his ordered search there were no longer any police at the facility and Oberlander did not make any mention of a bomb threat when he gave the search order.

At the close of Boyer's examination, I granted General Counsel's motion over Respondent's objection, to amend the complaint to add to the change in Boyer's job duties alleged as discriminatory under the Act, the elimination of refuse collection from Oberlander's as well as Boden's offices. While it came at a late date just before General Counsel rested its case-in-chief, and the government had the information on which it was based in its possession for some time, on balance I concluded that Respondent had not been prejudiced, inasmuch as it was closely related to the allegation of the elimination of cleaning duties at Boden's office, Boyer

had been subject to cross-examination on his recital, which included his conversations with Union Agent Barrios, and Respondent had a reasonable period of time, overnight, to supplement the preparation of its witnesses, in responding to the allegations of the complaint.

In responding to the allegations regarding Boyer, indeed all of the allegations of the consolidated complaint, Respondent called only one witness, Administrator Arthur Boden, even though it was Assistant Administrator Oberlander who had allegedly ordered Boyer's search, allegedly ordered his cleaning duties altered, and had requested a union leaflet from him.

Boden acknowledged having received a copy of the document related to the union organizing campaign which included Boyer's name, earlier described. He denied that Respondent either prepared it or authorized its posting as a nonemployer notice. He also reported that Mrs. Oberlander, David Oberlander's wife, performed some work for her husband at his office in the facility, at best maybe three times a month, helping him with routine files.

Boden could not recall, but did not deny, any instance when a discussion took place between Boyer, himself, and Oberlander, with Mrs. Oberlander either present or not present, when Oberlander asked Boyer for copies of the leaflet he was passing to be turned over.

Boden agreed that from the time he started as administrator in mid-1990 until approximately April 1991, Boyer had been responsible for removing his and Oberlander's office trash on a daily basis in the afternoon. Boden also admitted that it was he, not Oberlander, who directed that Boyer cease picking up the trash in his own office, the administrative office, and Oberlander's office. He did so by requiring that Boyer's supervisor, Tom Barrios, inform him of this change in his duties. As for any other new assignments given to Boyer, presumably including his cleaning of wheelchairs, that would come from Barrios. Here, Boden was not completely forthcoming. He was asked if, when he directed Boyer not to collect his and Oberlander's trash, he made him go to other floors, do other functions. Boden's response is evasive and ambiguous at best, but probably reflects that the wheelchair assignment was part of the order directing Boyer's change in duties. Boden replied: ''I don't deal with him directly. Any of his direction is by his supervisor.'' (Tr. 239.) Yes, but who ordered Boyer away from the offices and to the wheelchairs? Boyer said Barrios told him Oberlander didn't want him in his office again and then gave him a new assignment. I credit Boyer, particularly since Barrios was not called as Respondents' agent (and admitted supervisor) to contradict Boyer's recital.

Boden claimed that Boyer's change in duties was dictated by concerns of retaining confidentiality in labor relations matters. He testified that he had been involved in labor relations at Flatbush Manor; that from time to time he received correspondence from Flatbush Manor's attorneys and from the Labor Board and that he has documents that he prepares for litigation and for other employment related matters, that although he had and used an office shredder in 1991, neither Oberlander nor his secretary had one. As for Oberlander, he is the son of one of the two partners who own and operate Flatbush Manor and is involved in the day-to-day labor relations.

Boden knew that Boyer was an organizer for Local 1199, he wore buttons and was open about his union support on several occasions. Rather than place himself or Boyer in any kind of compromising position with confidential records, Boden determined that it was best that he not pick up the trash from his office. He did not explain this to Boyer.

As for Boyer's search by Oberlander the evening of July 11, 1991, Boden testified that he had learned about a bomb threat called into the facility about 10 p.m. by a telephone call to his home in a community some miles away. He called Oberlander who, living in Brooklyn, arrived first at the facility. Another bomb threat was made around midnight. The police had come after the first threat, and made a search, but were not present when he arrived. They later returned after the second. Because of the impending strike, an extra guard had been employed at this time. The strike was planned for the following Monday, July 15, but Boden learned at about 3 p.m. on Friday, July 12 that it had been called off.

The incident with Boyer occurred between the two threats. It happened before Boden arrived. Although Oberlander was still there when he arrived, he left shortly afterward and did not learn about the search until later. Meanwhile, Boden himself, besides discussing the threat with Oberlander, proceeded to make a search of the entire building with the security guard. When the police arrived again, Boden discussed the second threat with them, but they did not conduct a search a second time. Boden did make a second search, looking for any suspicious packages or parcels.

Boden noted that Boyer filed no complaint with the police over his search. And he never turned over any union literature to Oberlander.

During his cross-examination, Boden testified that up until his removal of Boyer from trash duties in his office, he had permitted Boyer to remove his trash, including his shreddings which had been left in the trash bin there. His secretary's office area opens directly into his own through a doorway. As noted earlier, Oberlander's office is entered through a separate opening off the hallway. Prior to his removal in April, there had been no report to him of any incident involving improper conduct by Boyer, either removing anything, stealing anything, from his secretary's or Oberlander's office, or going through his or their garbage. Indeed, there was no incident which precipitated his request to Barrios to remove Boyer. Another employee in housekeeping was given this assignment to replace Boyer.

Boden acknowledged that he had conversations with Boyer at the facility, but mostly in the hallways. Since Oberlander's office was locked in his absence, it was more likely that he would have been present when Boyer collected his garbage. On the occasions that Mrs. Oberlander was present at the facility she would most likely be present in Oberlander's office spending time with him assisting with files.

On cross-examination Boden admitted that at the very time of the called in bomb threats the evening of July 11, he as well as all of management were very concerned about the impending threat of a strike by Local 1199. While he had no evidence that Boyer was involved in any way with any bomb threat at Flatbush, he had personal knowledge that Boyer was involved with Local 1199.

In addition to hiring an extra security guard, Boden took other, unspecified remedial steps to prevent the strike.

As to the physical search itself, while Boden disputed that a search took place of Boyer's person, he readily interpreted the event as one in which, to the best of his knowledge, ''[H]e [Boyer] basically gave himself up . . .'' (Tr. 289.) Further, Boden agreed that Boyer was the only employee so approached by security guards that evening or who voluntarily removed the contents of his pockets. Finally, no suspicious items were turned up in the searches made of the facility that evening by either the management or the police. While Boden made reference to some possible acts of vandalism at the facility in the week preceding the impending strike deadline, torn or burst water and gel mattresses and stuffed toilets of greater than normal frequency, apart from placing of Local 1199 stickers around the facility, he agreed that he had no evidence that Boyer had engaged in this vandalism, puncturing mattresses or placing stickers at the facility.

C. *The Allegations that Respondent Issued Discriminatory Warning Letter to Named Employees*

As noted earlier, on August 5, 1992, the Regional Director of Region 29, issued a Supplemental Decision on objections and certification of representative, certifying Local 1199, as exclusive bargaining representative in the nurses' aides and related employees' unit, earlier precisely described. On that date Norman Lewis, a Local 1199 organizer, had met with a group of unit employees and asked them to accompany him on August 10, as he visited the facility and delivered a letter to Respondents' administration demanding commencement of bargaining. The letter, which the parties stipulated Lewis had with him on August 10 on his visit to the facility, and which was ultimately received by Respondent, was dated August 7, 1992, prepared on Local 1199 letterhead, signed by Lewis and addressed to Oberlander, demanded immediate commencement of bargaining, suggesting two early dates, August 13 or 18 for the purpose, and requested confirmation. In fact, as earlier noted, Respondents requested review of the Regional Director's Supplemental Decision, and while that application was pending through close of hearing herein, there is no evidence that Respondents agreed to, or held negotiation sessions with the Union.

Certified nurses aide Cynthia Peters testified that she was one of the unit employees who agreed to accompany Lewis on his plant visit and delivery of the letter. On August 10 at 2:45 p.m., 15 minutes before the commencement of her 3 to 11 p.m. shift, she and five or six other evening shift employees she named met Lewis at the entrance to the Brooklyn facility. The employees got their timecards, punched in at the timeclock, and accompanied Lewis down a long hallway to Administrator Boden's office. There they met Boden's secretary who told them Boden was not in. When Lewis then asked to speak to Oberlander, his assistant, the secretary, told him Oberlander was at a meeting and he must go back to the lobby and wait.

Peters, the other employees, and Lewis returned to the lobby area to wait. This area, which is an entry area just beyond the front doors is approximately 8 feet wide and 30 feet long. To one side of the 8 foot width is a reception and security counter and to the other side is the entrance to the patient's recreation and TV room and beyond that, a large dining room. Approximately 30 feet from the entrance and lobby area, one may continue straight another 70 feet to a back entrance to the facility or turn left down an 8 foot wide hallway off of which at various distances are first two elevators, a timecard stacking area, previously referenced, a social worker's office, nurses' office, an entrance to a staircase, and at the end of this hall, 150 feet distant, the administrator's and secretary's offices, and to its left a separate office off the hall for the assistant administrator.

While Peters and the others were standing in the lobby a security guard informed them he has to do his job, he has to call the police because Lewis had no right to be here. The employees present then agreed to go upstairs to their work stations and to come down later to accompany him on delivery of the letter. Their reporting to work would also permit employees leaving work from the 7 a.m. to 3 p.m. shift to come downstairs. Peters and the others accordingly went to work on their assigned floors shortly before 3 p.m.

Peters and another nurses aide, Maisie Thorburn, reported to their second floor work area. Peters made rounds, saw the patients under her care, took a report from the nurse on the second floor, Charge Nurse Cornwall, and then at 3:15 p.m. asked the nurse if she could go downstairs, explaining that the organizer from the Local 1199 Union is there and he would like us to accompany him to take a letter to Boden or Oberlander. The nurse told Peters she could go. Thorburn also asked to leave for the same reason in Peter's presence and Cornwall also agreed to relieve her as well. When they left the floor two other nurses aides in addition to the charge nurse remained on duty to cover the unit.

Previously, Peters had received permission to leave her floor while on duty to see a personal visitor not allowed on the work floor and to attend in-service training.

When Peters and Thorburn arrived downstairs in the lobby, Lewis was still there along with two policemen. Also present were unit employees Dorothy Wade, Lucille Ellis, Helen Plowden, Nicole Alcime, Eunie Jones, Maria Laurole, Sission Lindo, Ina Lawrence, Marie Eve Doublette, Raphaela Charles, Jean Paul, a Ms. Charlesant, and Ms. Auguste. Some, like Peters and Thorburn, were employed on the 3 to 11 p.m. shift, while others present had just completed their 7 a.m. to 3 p.m. shift. Peters heard the policeman inform Lewis they were asked by the guard to remove him from the facility. Lewis explained to them he was there to take a letter with the workers of Flatbush Manor to the administrator. The policeman told the guard they had nothing to do with this. At this point, according to Peters, the employees present applauded, clapping their hands. Admitted Supervisor Donald Antoine for the 3 to 11 p.m. shift appeared and said okay ladies, get back to your units. The employees on that shift who were present immediately left the lobby and returned by elevator to their work stations in the facility.

Peters recalled being in the lobby on this occasion between ten to fifteen minutes. Other than the applauding, there was no chanting, exits and entrances were not blocked by the group of employees, and there was no obstruction in the lobby corridor. On Peter's return to her floor there was no report to her of any incidents having taken place in her absence and nothing was then said to her by management. However, about a week later at 9 p.m. she was called to the office by Supervisor Antoine.

Antoine gave her a letter to read and sign, after reading it she told him this isn't true and refused to sign. The letter, bearing Fair Management letterhead and printed in memo

form was directed to blank employee, with Peter's name imprinted in this case, was dated August 17, 1992, listed the Subject as ''Warning Notice-Unlawful Work Stoppage'' and contained the following language in its body:

> On August 10, 1992, Local 1199 caused an illegal work stoppage to occur at Flatbush Manor Care Center. By participating in this work stoppage, you choose to ignore the needs of our residents. Though Local 1199 may not care what impact their unlawful conduct has on our residents, FMCC does care.
>
> Be advised that any repeat of this unlawful conduct will not be tolerated.

Peters informed Antoine the employees had not caused a work stoppage. She had received permission from the charge nurse, which is the customary habit, to leave the floor. And she came back to the unit. Antoine did not reply.

At the foot of the warning notice appeared the signatures of Arthur Boden, as administrator, Miriam Somer, as director of nursing and Donald Antoine, as nursing supervisor. When Peters refused to sign, Antoine added the notation that the employee had refused to sign this document.

During her cross-examination Peters denied that any patients were in the vicinity of the reception desk, security area where Lewis had remained awaiting word that an administrator would see him and the employees had gathered to support the union agent's proffer of their bargaining demand. Neither did any patients, to her recollection, pass through that area, nor were any present on her elevator when she returned to work.

Among those who gathered at 3:15 p.m. in the lobby area were six employees from the evening shift and seven others who had just completed the day shift. Lewis still had the envelope in his hand to deliver when Peters and the other evening workers returned to their work area at about 3:25 p.m.

Peters and the others had applauded to express their happiness that Union Agent Lewis had not been thrown out or arrested.

Employee Ina Lawrence corroborated Peters as to the arrangements to deliver the bargaining letter in which she also participated, her initial wait with Lewis in the lobby, her commencing work by shift start at 3 p.m. and her return downstairs at 3:15 p.m. to rejoin Lewis who she learned from a phone call was still waiting to deliver it, but who now was being threatened with removal or arrest. She and Ms. Charles, another aide with whom she works, like Peters and Thorburn, asked and received permission from their charge nurse supervisor, an LPN, to leave the fourth floor, informing him there was a dispute downstairs they wanted to witness. Previously, like Peters, Lawrence had received permission on occasion to leave work to meet family members downstairs. When the two left the floor the charge nurse and another aide remained, not unusual under past practice.

Lawrence also heard Lewis respond to police inquiry by explaining he was a union organizer here to represent the employees and that was why he had to deliver a letter to the employer. The policeman replied if he's there for the workers there's no way they can put him out. She and the others present, a mix of day and evening shift employees, waited with Lewis, within a short while Supervisor Antoine told the evening shift employees to go back to work, and they did.

Lawrence's warning notice, which she also received on August 17, 1992, from Donald Antoine, identical to Peter's, likewise contained Boden's, Somers' and Antoine's signatures, and the notation, made by Antoine at the time, that she had refused to sign. Antoine also informed her that Oberlander had said to give the warning to the employees because they had left their floors without receiving permission from them. When Lawrence chided him that he knew they always ask permission from the nurse if they want to go downstairs, Antoine replied, ''well, it's not his doing, it's what the boss wants.'' Lawrence had never previously received a warning for leaving her floor after receiving permission from the charge nurse.

Lawrence, was like Peters, aware that the letter Lewis held for delivery, was a request made on Local 1199 letterhead that Respondent negotiate with the employees and its representative.

During her cross-examination, Lawrence acknowledged that three of the four aides assigned to her floor, for the 3 to 11 p.m. shift, the third being Mrs. Jean Paul, also left the floor to attend Lewis' effort to deliver the letter, but that she had completed her patient rounds and took reports before returning to the lobby area.

Like Peters, Lawrence denied there were any patients present or going to or from the dining room or elevator.

Later, Lawrence noted that as few as one aide had been left on her work floor when she had been called away to meetings or in-service training in the past.

Lawrence did not support Peters' view that she returned to the lobby to assist Business Agent Lewis in the delivery of the bargaining demand. According to Lawrence her return to the lobby was occasioned by the arrival of the two policemen; her understanding was that the employees leaving work at 3 p.m. would assist Lewis in that task. It should, however be noted that Lawrence's return to the lobby was triggered by what she understood to be a confrontation between the union agent whose actions she had earlier that day assisted and the Respondent, whose attempt to have the union agent removed, were interfering with the union effort to present the employees' bargaining demand. It is evident to me that in returning to the lobby Lawrence was choosing to support the Union Agent Lewis by her presence and thus, with the other employees, was thereby engaging in a form of protected concerted activity. Whether that activity was unprotected because it constituted an illegal work stoppage shall be examined shortly.

Lawrence, like Lewis, denied that the group of employees standing in the lobby blocked doors or were chanting, although there was much talking going on among them. Lawrence did not testify to any applauding when the police refused to act nor was she asked by Respondent counsel whether any spontaneous employee reaction took place to the police decision.

Finally, nurses aide Nicole Alcime, employed on the day shift, testified that after punching out from work at 3 p.m. on August 10 she and other aides on her shift met with Lewis in the lobby. Before she arrived there she was not aware that Lewis would be present. The other aides included Jones, Doublittle, Laurole, and Lindo. Lewis told them he was there to deliver a letter to management, but had been

told by a secretary that Oberlander was busy, and was now waiting in the lobby. She was present and corroborated the other employees' testimony on the guard's unsuccessful efforts to have Lewis removed by the police. She added that she was present when Lewis, accompanied by the police, again sought unsuccessfully to deliver the letter at Oberlander's office and then left the facility. The incident while she remained in the lobby occurred over a 30-minute period.

Alcime also received the identical written warning, which was presented to her about a week later by her supervisor, Andrea Jose. Jose told her to sign it because she was at the lobby with Norman Lewis. Alcime told her she was not going to sign the paper because she was off duty. Jose added her signature and the notation, ''Employee stated she's out of the building,'' which did not accord with Alcime's response or the fact that she was in the building when employees were present with Lewis in the lobby. Alcime recalls being told the warning would be placed in her file.

Alcime also testified that on occasion after work she waited in the lobby for a friend to go home together. Other employees remained as well. No rule prohibited it and she never received a warning before for doing it.

When asked about seeing any patients in the lobby, or hearing any chanting there or witnessing any blocking of entrances or exits, Alcime, like the other two employee witnesses, denied any such events.

During her cross-examination, Alcime testified that she and the other employees from her shift did not talk among themselves about why they were there because as soon as he, Lewis, had informed them that the reason for his presence was to deliver the letter to Oberlander, they all decided to stay in support of what he was doing.

Unlike Peters she, Alcime, did not participate in or hear clapping when the police said it wasn't their problem. Neither did she hear any cheering; however, the employees' reaction was to laugh and smile. This testimony conflicts with her affidavit where she recounts that after the police told Lewis that what he was there for was not police business, ''[W]e began to clap.'' When shown her affidavit, Alcime appeared to express surprise that the affidavit contained the word clap and insisted that she and the others laughed.

When Alcime was in the lobby with others from her shift she did not see there the evening shift aides who had earlier left to start work but who testified they returned at 3:15 p.m. to witness the police refrain from arresting or removing Lewis.

In addition to Alcime, Peters, and Lawrence, 12 other employees received identical warning notices, dated August 17, 1992, which they were each asked to sign in acknowledgment. All refused to sign and the warnings reflect this. One, M. Lauole, apparently told her supervisor she was in the lobby just standing to see if Oberlander will accept the paper. Another, L. Auguste, told her supervisor that she left at 3 p.m.

The parties stipulated into evidence a series of documents, establishing the following: On August 21, 1992, Respondent Flatbush filed an amended charge against Local 1199 in Case 29–CG–96 alleging that on August 10, 1992, Local 1199 caused a work stoppage to occur at Respondent's Brooklyn facility without proper notice as required by Section 8(g) of the Act.[3] By letter dated October 16, 1992, Regional Director Alvin Blyer informed Respondent Flatbush that he was refusing to issue complaint in this matter because there is insufficient evidence of any violation of the Act. There is no evidence that Respondent appealed the Regional Director's dismissal of this charge.

As noted earlier, Administrator Boden was Respondents' sole witness. He testified that Flatbush has a 200 patient capacity, no more than 10 percent of whom are ambulatory. The balance use wheelchairs or are assisted in moving to and from the activity and dining rooms off the lobby area. No more than 100 are in those rooms at any given time.

He learned of the demonstration after it was held, from Director of Nursing Somer. After receiving all of the facts from the staff, from supervisors, from the director of nursing, he reviewed them and determined to give each person involved a warning. He prepared it and instructed the director of nursing to follow through. The factors he used in determining to issue the warnings included whether or not the participating employees were on duty, whether they should have been handling resident care, whether or not they malingered in the facility, aiding and helping the others who were on shift and not going back to work.

Boden confirmed that employees must get permission from their supervisor to leave the unit. They cannot leave en masse unless there's an in-service training session given by someone on staff. In determining whether to permit aides to leave the nursing floors, the charge nurse has to decide what is safe in terms of coverage of patients.

Patients are served dinner between 4:30 and 6 p.m. and in-service training is conducted between 7:30 and 10:30 p.m., by which time most patients are in bed. The recreation department, social workers, and therapist are operating and functioning at 3 p.m. but not by the early evening.

Boden disclosed on cross-examination that on August 10, 1992, Flatblush Manor employed about 22 aides on the day shift and 17 on the evening shift. Boden agreed that the charge nurse on each of the five floors has discretion to grant permission for an aide to leave the floor, and that permission is granted for any reasonable request. The aides' requests for such permission have been based on a number of reasons which don't involve leaving the floor for in-service training. Boden himself is unaware whether permission is granted or withheld based on these other reasons.

Boden further agreed that none of the aides gathered in the lobby on August 10 after 3 p.m. carried picket signs. He also had no knowledge that any aides present from the 3 to 11 p.m. shift did not receive permission to leave their floors that day. In this connection Boden admitted that he made no inquiry of the supervisory charge nurses as to whether the aides who were absent from their floors had received permission to leave. Boden could not explain why he had made no such inquiry. Boden, himself, furnished information to Re-

[3] Sec. 8(g) makes it an unfair labor practice for a labor organization to fail to notify any health care institution and the Federal Mediation and Conciliation Service not less than 10 days prior to engaging in any strike, picketing, or other concerted refusal to work at such institution. In the case of bargaining for an initial agreement following certification the notice required shall not be given until the expiration of at least 30 days' notice of existence of a dispute given by the labor organization to the Federal Service and appropriate State agency.

spondent counsel to support the charge in Case 29–CB–96 which the Region ultimately dismissed.

Boden could not identify how many, if any, patients may have been present in the lobby or passing through at around 3 p.m. on August 10. Neither could he identify the number of patients present in the dining room at 2:30 where large group activity takes place every day until 3:30 p.m. Boden, further, was not aware of any aides present in either the recreation or TV room or dining room between 3:15 and 3:30 p.m. on August 10. Thus, Boden could agree the incident was confined to the lobby.

In his investigation Boden learned that the purpose of Lewis' visit was to present him or his assistant with a letter and later learned of its contents. He first learned of the effort to give him the letter that evening when the Nursing Director called him at home. He could not recall if he knew its contents when he made the decision to discipline. The letter was dated August 7 and may have been received as early as the 10th, 7 days before the issuance of the written warnings.

Certainly, by either August 5 or 6, 1992, Boden learned that the Regional Director's Supplemental Decision on objections and certification of representative dated August 5, had issued.

While Boden insisted that the Flatbush Manor personnel manual not produced, given to employees during their training, included an admonition that employees should promptly leave the facility at the end of their shift, it is also common practice for employees to remain at least a few minutes waiting for a ride or colleagues to come off shift. Boden knew of no warnings ever given to employees for remaining on site several minutes after they clock out.

The warnings were issued to six day-shift and nine evening-shift employees. The six off duty were aiding the nine on duty employees and creating a crowed scene. While Boden asserted the lobby was crowded during the incident, he was aware of no evidence that patients were injured or facilities of Flatbush damaged by virtue of the gathering in the lobby. Nor was he aware that any person was blocked or prevented from arriving at or leaving the facility.

Neither did Boden have any information that patient care was adversely affected, while the evening-shift aides were gathered in the lobby.

Boden also had no knowledge that while Lewis was approached by the guards and police, and even after, until ''the thing broke up'' (Tr. 272) the aides present were asked to leave the area. When the evening aides were subsequently asked to return to their stations by Antoine, they all did so and Lewis then left as well.

The whole incident lasted half an hour, but Boden did not know how long the 15 aides who received warnings were present together during that time period. It was possible they were present together as little as 5 minutes. There was also no chanting, no picket signs, and the incident did not spill to the outside of the facility.

Boden also acknowledged that it was Oberlander who directed the guard to remove Lewis after Oberlander, attending a meeting at the facility, learned that Lewis wished to meet with him in the absence of Boden and present him with a letter.

D. *Credibility Resolutions*

Employee Marc Boyer's testimony regarding both his union activities and the incidents which form the bases for the allegations concerning him contained in the consolidated complaint is credited.

Respondent admits its knowledge of Boyer's union support arising from his wearing a union button, among other activities. Boden did not dispute Boyer's claimed attendance at the representation hearing or his serving upon him a union subpoena. Boden also admitted receipt of the organizing related document containing Boyer's name which was posted for more than a day in April 1992 at the punch card stacking area located off the facility's hallway. I credit Boyer's leadership role in contacting the Union, in soliciting cards and in his membership and participation on the employee union committee.

In particular, I also credit Boyer regarding Oberlander's request for union leaflets and his own reply asserting his prounion allegiance. Neither Oberlander testified in the hearing. I draw the adverse inference that if David Oberlander had been called to testify by Respondent his testimony would have not supported Respondents' denial of the allegation. Boden, who Boyer placed in Oberlander's office during the conversation, did not deny Boyer's testimony, but could not recall it. Boyer's failure to include Boden in his affidavit as among those present when Oberlander sought Boyer's aid in surveillance of the Union's organizing activities, is not, alone, grounds to discredit him. It is not inconsistent with his later testimony including Boden at the interrogation and I credit Boyer's insistence that Boden, was, indeed present, particularly where Boden himself does not dispute it, but only cannot recollect it. The evidence regarding Mrs. Oberlander's occasional attendance in her husband's office is also consistent with Boyer's testimony placing her there during his interrogation.

Respondent does not deny reassigning Boyer and removing certain of his job duties. Boyer is fully credited regarding his conversations with Barrios during which an initial job reassignment was first made, then withdrawn, and then finally implemented following the Respondent's unsuccessful attempts to secure union literature from Boyer accompanied by Boyer's strong expression of union support as well as the inclusion in a prominent place of Boyer's name on an unidentified organizing campaign document. Barrios, an admitted supervisor of Boyer, although not himself a Flatbush Manor employee, whose status as agent of Respondent I concluded was established on the record, was not called to contradict Boyer's report of these conversations.

Finally, no Respondent witness was called to dispute or contradict Boyer's consistent and credible account of his having been subjected to a physical search of his person on July 11, 1992, and Boyer is credited as to this incident.

As to the events leading to Respondents' issuance of written warnings to 15 named employees, there is little to choose between the employees' own versions and Boden's. The employees were present. Their versions are generally consistent with each other, and where they vary, for example between Peter's recollection of applause when the policemen announced their intention not to intervene in the dispute arising from Union Agent Lewis' presence at the facility, Lawrence's failure to testify to any spontaneous employer reaction, and Alcime's recollection of laughter and smiling, I am

not convinced, despite Respondent counsel's arguments made to the contrary, that these variances undermine the substance of the General Counsel's allegation that the employees engaged in a form of concerted activity which did not lose its protection because of extreme or coercive behavior. I do credit Peters over Alcime's testimony, but not her affidavit, that the employees clapped their hands. This resolution does not discredit other portions of Alcime's testimony, consistent with both Peters and Lawrence that they each received permission from their charge nurse to leave the floor, and that they were present to assist Lewis in delivering the Union's letter including supporting Lewis against Respondents' efforts to have him removed before he could accomplish that objective.

All three employees were also consistent in denying any interference with patient care or damage to or interference with movement at the facility, and two Peters and Lawrence, both testified to their prompt obedience to the supervisory direction to return to their work stations. Alcime's failure to acknowledge the presence of the evening shift employees after 3:15 p.m. is perplexing, but I do not credit her on this point in the face of the consistent contrary testimony of Peters and Lawrence as well as the consistent testimony of Boden regarding his secondhand knowledge of the incident.

It is significant that no charge nurse was called by Respondent to dispute the testimony of the two evening shift employees that they, as well as others in their presence, each received permission to leave their floors and the employees are credited. Indeed, Boden admittedly failed to make any inquiry regarding this matter and, further, was unaware of any management attempt to have them return to their floors during Lewis' wait to see him or Oberlander and while he was approached by guards and police.

Analysis and Conclusions

There is no question that Respondents were well aware of Boyer's key union advocacy role. Boyer had not only distributed cards but union literature as well. In attempting to extract information about the Union and its written solicitation of employees from a known leading advocate, Respondent restrained an employee in his right to be free from interference with, and coercion of, his active participation in the union organizing campaign. *Delta Data Systems*, 279 NLRB 1284 (1986); *Anchorage Times Publishing Co.*, 237 NLRB 544 (1978). By singling out a leading advocate with whom Oberlander had to that point in time, a nonthreatening relationship, Oberlander was applying considerable pressure to comply with management's desires in the context of an ongoing election campaign. That pressure, applied in the presence of Respondents' top manager, constitutes an interference with Boyer's Section 7 rights in violation of Section 8(a)(1).

By changing Boyer's job duties, without explanation to him, in the manner described, immediately following his negative response to the pressure described, and during an ongoing election campaign in which Boyer had a known leading role as the Union's advocate, General Counsel has established a prima facie case of violation of Section 8(a)(1) and (3) of the Act.

Boden's explanations for the removal of Boyer from his duties in emptying trash from the administrators' offices are not persuasive in overcoming the discriminatory motive evident in Respondents' actions. There is no evidence that Boyer was privy to or had access to any labor relations documents or materials in either of the offices. According to Boden, Oberlander locked his door in his absence, and thus would have been present when Boyer performed his trash collection duties there. Boden himself used a shredder to destroy paper documents, and surely would have exercised reasonable care over their availability to anyone having access to his office.

Apart from these discrepancies which serve to undermine Respondents' factual claims regarding Boyer's access to confidential records, Respondents' defense is faulty because they have failed to show that Boyer at any time looked at any of the labor relations correspondence or related records. See *Doxsee Food Corp.*, 218 NLRB 934, 935 (1975). Respondents' explanations for Boyer's removal thus appear flimsy and lacking in merit and, in my judgment, shield their true motive of retaliating against him for his outspoken defense of the Union's drive, his active union support including serving a subpoena on Boden himself, wearing of a union button and having his name prominently included in a known union related but unidentified leaflet. I conclude that Respondent discriminatorily changed Boyer's duties, even though he lost no pay as a consequence. Where, as here, the elimination of duties, without any reduction in pay, was in retaliation of employees' protected conduct the employer has been found by the Board to have committed violations of Section 8(a)(1) and (3) of the Act. *Miner's Welfare, Pension & Vacation Funds*, 256 NLRB 1145 (1981); see also *Telepromoter of Tuscaloosa*, 233 NLRB 481(1977). I, also conclude that Respondent has failed to prove by a preponderance of the evidence that Boyer's duties would have been changed in the absence of his protected conduct. See *Transportation Management Corp.*, 462 U.S. 393, 400 (1983). Finally, by subjecting Boyer to a physical search without any evidence or any reason to believe that he was involved in the anonymous bomb threat, Respondent independently interfered with Boyer's Section 7 rights. A number of facts bear on this conclusion. Boyer, a known union organizer, was the only employee searched. The search took place during a period when Respondents' administrator was very concerned about an imminent union strike threat, with the strike to become effective 4 days hence. Boyer was not engaged in any suspicious conduct, and his use of the telephone at the facility could have been easily and innocently explained, if only Oberlander had asked. Instead Oberlander acted precipitously to restrain Boyer's movements with the aid of guards and forced him to disclose the contents of his pockets. Oberlander failed to rebut Boyer's accusations. As a consequence I draw an adverse inference that his testimony would not have assisted Respondents' defense to this allegation. *International Automated Machines*, 285 NLRB 1122 (1987).

In the absence of any valid reason to search Boyer's person, and given Oberlander's knowledge that Boyer would not cooperate with Respondents' past efforts to secure information about the Union's organizational efforts, I infer that Oberlander was seeking now to secure through force any current evidence of Union Committee member Boyer's participation in the prestrike preparation activity and of the Union's plans regarding the threatened strike. Such conduct tends to inhibit and coerce employees in the exercise of rights under

the Act, is threatening and violative of personal liberty and movement and constitutes a form of unlawful surveillance under Section 8(a)(1) of the Act which the Board has rightfully condemned. See *Intermedics, Inc.*, 262 NLRB 1407, 1415 (1982); *Clark Equipment Co.*, 278 NLRB 498, 504 (1986).

By issuing warning notices to the 15 aides who were briefly present in the lobby of the Brooklyn facility while supporting and accompanying the Union Business Agent as he attempted to deliver the Union's bargaining demand, Respondents' have violated Section 8(a)(1) and (3) of the Act.

The evidence discloses that in issuing the warnings Respondents failed to investigate whether any of the aides did not have permission of their supervisors to leave their work areas. The two aides who left their shift to accompany the Union Agent testified credibly that they and at least two others on their floors had such permission. Further, the record contains no evidence of employee failure to provide necessary patient care, interference with ingress or egress or any obstruction of Respondents' services flowing from their concerted support of the Union's bargaining claim.

It was Respondents' refusal and failure to receive the written demand which led directly to the union agent's remaining at the facility and to the employees' lending their support to his efforts to serve the demand and to be free from the Respondents' efforts to thwart that effort. Boden admitted that Oberlander directed the guards to eject the union agent and thereby prevent him from delivering the demand. Thus, Respondents were engaged in a concerted effort to delay their response to the bargaining request and delay the effective date for commencement of bargaining for the aides they employed. A few days before the incident the Union had been certified and there can be no doubt that Oberlander and Boden were well aware of the purpose of Lewis' visit. Thus, by refusing to receive him, Respondents created the circumstances which gave them the opportunity to discipline the strongest Union supporters among their aides.

No aide had been previously disciplined for remaining on site after her shift had ended and Respondents produced no evidence of insubordination, all evening shift participants having promptly returned to their jobs when asked.

In the absence of any evidence of a concerted refusal to perform services, and given the circumstances of the employees' conduct disclosed by the record, I cannot conclude, in agreement with the Regional Director in his dismissal of Respondents' charge, that the participating employees engaged in an illegal work stoppage or strike in violation of Section 8(g) for which they could legitimately be disciplined. See *Walker Methodist Residence*, 227 NLRB 1630 (1977); *The Masonic Home*, 206 NLRB 789 (1973).

Inasmuch as the events found here did not exceed one-half hour and many of the 15 employees were present for less than that full period of time encompassed by the union agent's presence in the lobby of the facility, were clearly nondisruptive, the aides did not intend their participation as a stoppage of work but rather was a spontaneous outpouring of support for the Union's and their bargaining efforts which was only lengthened by Respondents' obdurate refusal to meet, and were deferential to Respondents' requests to return to work and to leave the facility, I have no hesitancy in concluding that the employees' conduct was protected concerted activity in support of Local 1199 and Respondents' warning notices to them constitute violations of Section 8(a)(1) and (3) of the Act as a direct and effective interference with that activity and discrimination in regard to their tenure of employment. See *District 1199-E, Health Care Employees*, 229 NLRB 1010 (1977).

CONCLUSIONS OF LAW

1. Respondents Flatbush and Fair constitute a single integrated business enterprise and a single employer, within the meaning of the Act, and each of them, are now, and have been at all times material herein, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and health care institutions within the meaning of Section 2(14) of the Act.

2. Local 1199, Drug, Hospital and Health Care Employees Union, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. By directing their employees to provide Respondents with copies of leaflets distributed to them by Local 1199, and by detaining known active union supporters among their employees and subjecting them to a physical search of their person, without a reasonable basis for such a search, thereby engaging in surveillance of the union activities of employees, Respondents have interfered with, restrained and coerced, and are interfering with, restraining and coercing, their employees in the exercise of the rights guaranteed in Section 7 of the Act, and Respondents thereby have been engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By changing the job duties of employees, and by issuing disciplinary letters of warning to their employees, Respondents have discriminated, and are discriminating in regard to the hire and tenure and terms and conditions of employment of their employees, thereby discouraging membership in a labor organization, and Respondents thereby have been engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondents have each engaged in certain unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that they each cease and desist therefrom and take certain affirmative actions which are necessary to effectuate the policies of the Act.

I shall recommend that Respondents remove from their files the disciplinary warnings issued to each of the 15 employees who received them and notify each of these employees, in writing, that this has been done and that the warnings will not be used against them in any way. I will not recommend that Respondents restore Marc Boyer's preexisting job duties which were discriminatorily removed from him because he is no longer employed by Respondents for reasons unrelated to this proceeding.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be

ORDER

The Respondents, Flatbush Manor Care Center and Fair Management Consulting Corp., Brooklyn, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Engaging in surveillance of employees' union activities by directing them to provide Respondents with copies of leaflets distributed to them by Local 1199, Drug, Hospital and Health Care Employees Union and by detaining known active union supporters among employees and subjecting them to a physical search of their person, without a reasonable basis for such a search.

(b) Changing the job duties of employees, and issuing disciplinary letters of warning to them because they engaged in protected concerted activities under the Act.

(c) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action neccessary to effectuate the policies of the Act.

(a) Remove from their personnel files the disciplinary warnings issued to employees N. Alcime, E. Jones, M. Laurol, S. Lindo, C. Peters, I. Lawrence, M. Doublette, R. Charles, A. Jean Paul, M. Charlesaint, I. Auguste, D. Wade, L. Ellis, H. Plowden, and M. Thorburn, and notify these employees, in writing that this has been done and that the warnings will not be used against them in any way.

(b) Post at its Brooklyn, New York facility copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT engage in surveillance of our employees' union activities by directing them to provide us with copies of leaflets distributed to them by Local 1199, Drug, Hospital and Health Care Employees Union or by detaining known active union supporters among our employees and subjecting them to a physical search of their person without a reasonable basis for such a search.

WE WILL NOT change the job duties of any of our employees or issue disciplinary warnings to them because they engaged in concerted protected activities under the Act.

WE WILL remove from the files of employees N. Alcime, E. Jones, M. Laurol, S. Lindo, C. Peters, I. Lawrence, M. Doublette, R. Charles, A. Jean Paul, M. Charlesaint, I. Auguste, D. Wade, L. Ellis, H. Plowden, and M. Thorburn the disciplinary warnings we issued to them and notify each of them, in writing, that this has been done and that the warnings will not be used against them in any way.

FLATBUSH MANOR CARE CENTER AND FAIR MANAGEMENT CONSULTING CORP.